

REMARKS

Claims 1-9 are currently pending in this application (claims 10-17 being previously withdrawn). Claims 1 and 9 are amended by this response.

Summary of the Action

Claims 1-9 are rejected under 35 U.S.C. § 112 as failing to comply with the enablement requirement. Claims 1-9 are also rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Published Application No. 2003/0029453 to Smith et al. (hereinafter “Smith”) and under 35 U.S.C. § 102(e) as being anticipated by U.S. Published Application No. 2003/0125662 to Bui (hereinafter “Bui”).

Enablement of claims 1-9

The Office Action rejects claims 1-9 for failing to comply with the enablement requirement of 35 U.S.C. § 112. Particularly, the Office Action states that the feature of providing orthogonally redundant information regarding at least one of said physiological conditions was deemed deficient because it is not clear what Applicant is claiming.

Applicant respectfully submits that enabling support for the particular claimed feature is included in the text of the present application. As noted in paragraph 0022 of the present specification, “[t]he multiple monitoring of a single patient parameter using separate monitoring techniques [is] herein known as orthogonal redundancy.” Orthogonal redundancy is mentioned throughout the specification as the system and method of providing orthogonal redundancy is described. Claims 1 and 9 have also been amended to clarify how the system provides orthogonal redundancy. Based on the disclosure in the specification and the amendments, Applicant respectfully submits that the current language of claims 1-9 is fully enabled. Thus, Applicant requests withdrawal of the rejection under 35 U.S.C. § 112.

Applicant’s claims are allowable over the prior art

The Office Action also rejects claims 1-9 under 35 U.S.C. § 102 as being anticipated by Smith and Bui. These rejections are respectfully traversed.

To establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. MPEP 2131. Applicant respectfully submits that this criterion has not been met for the references as applied to the claims of the present invention.

Smith

Smith discloses an emergency life support system including monitors and a patient ventilator. Smith, Abstract. Smith does not teach or suggest a drug delivery controller, control of an effector based on signals from patient health monitors, nor orthogonal redundancy as claimed in amended claims 1 and 9 of the present invention.

Smith does not disclose drug delivery or pain relief outside of paragraph 0013, which explains that Smith supports injuries common in combat, including those that “may occur or be related to sedation, anesthesia, or shock.” Smith discloses an infusion pump means, but the pump means is specifically disclosed to deliver fluids to the patient (i.e., saline solution). Smith fails to teach or suggest a drug delivery controller as claimed in the present invention.

Smith also fails to disclose the use of two or more patient health monitor devices where at least two of said patient health monitor devices provide orthogonally redundant information, nor an electronic controller that receives signals from the patient health monitors, compares said signals to ascertain whether the monitored data is reliable, and controls an effector based on the results of the comparison and in accordance with the parameters. Smith discloses patient monitors but fails to disclose using multiple monitors of differing techniques to measure the same patient physiological condition and thus does not disclose orthogonal redundancy. Further, Smith discloses an apparatus controller (Figure 1), but Smith nowhere discloses a controller as in the claimed invention. For example, the controller in Smith does not compare multiple monitor signals to determine whether the data is reliable and then controls the system based on the results of that comparison.

Thus Smith fails to teach or suggest all the elements of independent claims 1 and 9 of the present invention. In this regard, the rejections of the claims based upon Smith fail to meet the standard for a *prima facie* anticipation rejection as these references fail to teach all elements of the claims.

In light of the above amendments and remarks, it is respectfully submitted that the outstanding rejection of the above claims as being anticipated by Smith is improper. Thus, Applicant respectfully submits that claims 1 and 9 are not anticipated by Smith.

Claims 2-8 depend directly or indirectly from claim 1 and incorporate the limitations of the base claim. Thus Applicant respectfully submits that claims 2-8 are not anticipated by Smith for at least the reasons recited with respect to claim 1 above.

Bui

Bui (as described in the Abstract) discloses a medical treatment administration system for delivering a medical treatment to a patient. The system has a medical device, an electronic processor coupled to the medical device, and a sensor coupled to the processor. Based on signals from the sensor, the processor regulates the distribution of medical treatment to the patient over a period of time. However, Bui does not disclose orthogonal redundancy as in amended claims 1 and 9 of the present invention.

Claim 1 recites, in part, "two or more patient health monitor devices adapted so as to be coupled to a patient and so as to each generate a signal reflecting one or more physiological conditions of the patient wherein the operating principle of each of said monitors is different and at least two of said patient health monitor devices provide orthogonally redundant information regarding at least one of said physiological conditions" and "an electronic controller including parameters of at least one of said monitored patient physiological conditions, said electronic controller interconnected with the patient health monitors, the user interface, the drug delivery controller, and the effector, wherein said electronic controller receives said signals, compares said signals to ascertain whether the monitored data is reliable, and controls the effector based on the results of the comparison and in accordance with the parameters." Claim 9 recites similar limitations. Bui discloses the use of multiple sensors in series or parallel (see Bui, paragraph 0055), but Bui does not disclose multiple monitors providing orthogonally redundant information nor does Bui disclose an electronic controller that compares multiple monitor signals to determine whether the data is reliable and then controls the system based on the results of that comparison.

Thus Bui also fails to teach or suggest all the elements of independent claims 1 and 9 of

the present invention. In this regard, the rejections of the claims based upon Bui fail to meet the standard for a *prima facie* anticipation rejection as these references fail to teach all elements of the claims.

In light of the above amendments and remarks, it is respectfully submitted that the outstanding rejection of the above claims as being anticipated by Bui is improper. Thus, Applicant respectfully submits that claims 1 and 9 are not anticipated by Bui.

Claims 2-8 depend directly or indirectly from claim 1 and incorporate the limitations of the base claim. Thus Applicant respectfully submits that claims 2-8 are not anticipated by Bui for at least the reasons recited with respect to claim 1 above.

Appropriate reconsideration and withdrawal of the rejections of claims 1-9 under 35 U.S.C. § 102 is respectfully requested.

Conclusion

In view of the foregoing, Applicant respectfully requests that the Examiner examine the application upon the merits, and that the above remarks be fully considered in conjunction therewith. Timely allowance of all currently pending claims and the issuance of a Notice of Allowance are requested.

Applicant has filed this Response and Amendment without increasing the number of claims above the number previously submitted or paid for. Accordingly, no additional claims fees are believed to be due at the present time. If such fees or any other fees associated with the filing of this paper are due at this time, please charge the fees to our Deposit Account No. 50-1349. Also, please credit any overpayments to Deposit Account No. 50-1349.

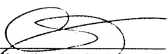
The Examiner is invited to contact Applicant's undersigned representative via telephone if such would expedite prosecution of this application toward allowance.

Respectfully submitted,

Dated: January 29, 2009

HOGAN & HARTSON LLP
555 13th Street, N.W.
Washington, D.C. 20004
Telephone: 202-637-5600
Facsimile: 202-637-5910

By: _____


Celine Jimenez Crowson
Registration No. 40,357

Customer No. 24633